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No. 71-1227

In the Supreme Court of the United States

OCTOBER TERM, 1971

CARLO MASTROTATARO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Maryland, petitioner was convicted of having aided and abetted the interstate transportation of stolen United States Treasury bills, knowing them to have been stolen, in violation of 18 U.S.C. 2314. Petitioner was sentenced to nine years' imprisonment. The court of appeals affirmed (Pet. App. A).

Petitioner's principal contention that the trial court abused its discretion in admitting evidence as to other crimes is fully dealt with and properly rejected in the opinion of the court below upon which we rely. Petitioner's remaining contention that he was improperly denied an opportunity to interview a government witness prior to trial is without merit.[1] The particular

[1] The court below deemed this point to be without substance and did not discuss it (Pet. App. A 21).

witness was then serving time in a federal prison and was advised that petitioner or his attorney desired to interview him. But, as the Assistant United States Attorney told the court: "Mr. Teresa [the witness] advised the authorities that he did not wish to be interviewed by the defendant and/or his counsel" (Pet. 4).[2] This is not a case in which the prosecutor deliberately hindered petitioner's access to a witness but simply one in which the witness did not desire to be interviewed by petitioner or his attorney. See *United States* v. *Long*, 449 F. 2d 288, 295–296 (C.A. 8), certiorari denied, March 6, 1972 (Nos. 71–702, 71–5916, 71–5924 and 71–5925); *United States* v. *Dryden*, 423 F. 2d 1175, 1177–1178 (C.A. 5), certiorari denied, 398 U.S. 950.

It is therefore respectfully submitted that the petition for a writ of certiorari be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MAY 1972.

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[2] Petitioner does not dispute the credibility of the representation but asserts that the witness should have been brought before the court for determination of whether his refusal to be interviewed was "free from taint of improper suggestion by some agent of the government" (Pet. 7). The record, however, does not indicate that petitioner asked that such a procedure be followed (Tr. 23, September 23, 1970) or that he asked for a hearing at trial to determine whether the witness was improperly influenced. In any event, any error in failing to follow this procedure was harmless in light of the fact that petitioner's first trial, at which the same witness also testified, ended in a mis-trial after the jury failed to agree on a verdict. By the time the witness testified at the second trial petitioner was fully aware of the testimony to be given by the witness and had access to all Jenks Act material.

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